THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 12312 of 2007

Dated: 14.06.2007

Between:

O. Kanaka Rao, S/o Thatha Rao,
aged about 45 years, Occ: Regular Mazdoor (BSNL),
O/o SDE (Intl)) Gannavaram, Krishna District.

..... PETITIONER

AND

The Deputy General manager (P&A) and
Competent Disciplinary Authority,
O/o General Manager, Telecom district,
BSNL Bhavan, Vijayawada,
Krishna District – 4 and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 12312 of 2007

Order:

Questioning the action of respondent No.1 in simultaneously holding the departmental enquiry, vide Memo dated 02.02.2007, and continuing further proceedings on the same set of charges as made out in C.C. No.26 of 2006 on the file of the Special judge for CBI Cases, Visakhapatnam, as illegal and arbitrary, the petitioner filed the present writ petition.

The petitioner is working as Regular Mazdoor in the respondents-BSNL. While so, based on the complaint given by one R. Uday Kumar and R. Satyanarayana, residents of Mukkupadu village, that the petitioner and one G. Poornachandra Rao demanded Rs.1200/- as bribe from them for giving connection for installation of Coin Collection Box at their Kirana Shop, the Central Bureau of Investigation, Visakhapatnam, trapped the petitioner on 25.03.2006 and filed a criminal case in C.C. No.26 of 2006 on the file of the Special Judge for CBI Cases, Visakhapatnam, against him, which is pending for trial. While the matter stood thus, respondent No.1 issued impugned charge memo dated 02.02.2007 proposing to hold departmental enquiry against the petitioner on the same set of charges and proceeding with the enquiry. Hence, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-BSNL.

The main contention of the petitioner in this writ petition is that as criminal case is pending against him, the parallel departmental enquiry is not allowed to be continued, which would cause prejudice to the

criminal proceedings. The same cannot be accepted inasmuch as the Apex Court in ***LALIT POPLI Vs. CANARA BANK AND OTHERS***[1] held that the Criminal and Departmental proceedings are entirely different and the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. The relevant paragraph reads as under:

> "It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See ***State of Rajasthan Vs. B.K. Meena***[2]) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

Further, the Apex Court in ***AJIT KUMAR NAG Vs. GENERAL MANAGER (PJ), INDIAN OIL CORPN. LTD***[3]**,** held that the two proceedings, criminal and departmental, are entirely different and they operate in different fields and have different objectives. The relevant portion reads as under;

> "…….The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to

> appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability"……"

In view of the above settled position of law, pendency of criminal case is not a bar to conduct a departmental enquiry. The writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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N.V. RAMANA, J.

Date: 14.06.2007
Nsr

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[1] 2003 (3) SCC 583

[2] (1996) 6 SCC 417 1996 SCC (L&S) 1455

[3] (2005) 7 SCC 764